

Introduced by Senator Escutia

February 18, 2005

An act to amend Section 25401.1 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 471, as amended, Escutia. Hazardous substances: ~~screening levels.~~

Existing law, the California Land Environmental Restoration and Reuse Act (CLERRA), specifies a procedure for the selection of an oversight agency for a property subject to a phase I environmental assessment by representatives of the Department of Toxic Substances Control and the State Water Resources Control Board. The act authorizes a local agency to issue a notice requiring the owner or operator to conduct a phase I environmental assessment of certain property, in response to the release or the threat of a release and to protect human health and the environment, as specified. The act also authorizes the local agency to require the owner or operator to prepare a preliminary endangerment assessment under specified conditions and require or initiate an investigation and remedial action. The act defines the term "property" as meaning real property, but excludes, from that definition, among other things, a site that has one or more full-time equivalent employees on an annualized basis.

This bill would delete that exclusion from CLERRA, and would thus include in the act, as "property," a site that has one or more full-time equivalent employees on an annualized basis.

~~Existing law requires the California Environmental Protection Agency to initiate a scientific peer review of specified screening levels and to publish a list of screening numbers determined for specified~~

contaminants, and to conduct public workshops in establishing and revising those levels. Existing law also requires the agency to conduct a study to evaluate the usefulness of pilot screening numbers, as defined for those purposes, for the scientific peer review of the screening numbers, and to publish a specified informational document.

~~This bill would declare the intent of the Legislature to enact legislation that would add specific requirements necessary to expedite the restoration and reuse of abandoned and underutilized properties with real or perceived environmental contamination.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. It is the intent of the Legislature to enact~~
- 2 ~~SECTION 1. Section 25401.1 of the Health and Safety Code~~
- 3 ~~is amended to read:~~
- 4 25401.1. For purposes of this chapter, the following terms
- 5 have the following meanings:
- 6 (a) “Department” means the Department of Toxic Substances
- 7 Control.
- 8 (b) “Hazardous material” means a substance or waste that
- 9 because of its physical, chemical, or other characteristics may
- 10 pose a risk of endangering human health or safety or of
- 11 degrading the environment. “Hazardous material” includes, but is
- 12 not limited to, all of the following:
- 13 (1) A hazardous substance, as defined in Section 25281 or
- 14 25316.
- 15 (2) A hazardous waste, as defined in Section 25117.
- 16 (3) A waste, as defined in Section 13050 of the Water Code or
- 17 as defined in paragraph (2) of subdivision (b) of Section 101075.
- 18 (c) “Local agency” means the local department, office, or
- 19 other agency of a city or county designated pursuant to
- 20 subdivision (a) of Section 25401.2.
- 21 (d) “Oversight agency” means the department or the regional
- 22 board, as appropriate, that oversees a site investigation and
- 23 remedial action pursuant to this chapter.
- 24 (e) “Person” means an individual, trust, firm, joint stock
- 25 company, business concern, partnership, limited liability

1 company, association, or corporation, including, but not limited
2 to, a government corporation. “Person” also includes any city,
3 county, city and county, district, commission, or the state, or any
4 department, agency, or political subdivision thereof, any
5 interstate body, and the United States and its agencies and
6 instrumentalities to the extent permitted by law.

7 (f) “Phase I environmental assessment” means a preliminary
8 assessment of a property to determine whether there has been, or
9 may have been, a release of hazardous material on or near the
10 property, based on reasonably available information about the
11 property and the area in its vicinity. A phase I environmental
12 assessment may include, but is not limited to, a review of public
13 and private records of current and historical land uses, historical
14 aerial photographs of the property and the area in its vicinity,
15 relevant files of federal, state, and local agencies, regulatory
16 correspondence, records of prior releases of hazardous materials
17 and environmental reports, database searches, visual and other
18 surveys of the property, and interviews with available current and
19 previous owners and operators of the property. A phase I
20 environmental assessment does not require sampling or testing
21 on or around a property.

22 (g) “Preliminary endangerment assessment” means an activity
23 that is performed to determine whether current or past hazardous
24 material management practices or waste management practices
25 have resulted in a release or threatened release of hazardous
26 materials that pose a threat to public health or the environment. A
27 preliminary endangerment assessment shall be conducted in a
28 manner that complies with the guidelines published by the
29 department entitled “Preliminary Endangerment Assessment:
30 Guidance Manual,” and that evaluates whether any hazardous
31 material has been discharged, threatens to discharge, or is
32 discharging, to waters of the state. A preliminary endangerment
33 assessment requires sampling and analysis of a property, a
34 preliminary determination of the type and extent of hazardous
35 materials release or threatened release on contamination of the
36 property, and a preliminary evaluation of the risks that hazardous
37 materials contamination of the property may pose to public
38 health or the environment, including waters of the state.

39 (h) (1) “Property” means real property, as defined in Section
40 658 of the Civil Code.

1 (2) “Property” does not include any of the following:

2 (A) A site listed on the National Priorities List pursuant to the
3 Comprehensive Environmental Response, Compensation, and
4 Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) or proposed
5 for, and ranked as, qualifying for this list.

6 (B) A site on the list maintained by the department pursuant to
7 Section 25356.

8 (C) An active or former federal military base or property that
9 is or was owned by any department, agency, or instrumentality of
10 the United States.

11 (D) A property for which a no-further-action determination
12 has been issued by the department or a regional board, under
13 applicable statutes or regulations.

14 (E) A site that is, or becomes, subject to an enforcement action
15 or order issued by a regional board pursuant to Division 7
16 (commencing with Section 13000) of the Water Code, or an
17 enforcement action by the department pursuant to Chapter 6.5
18 (commencing with Section 25100) or Chapter 6.8 (commencing
19 with Section 25300).

20 (F) A site that is, or becomes, subject to a corrective action
21 requirement, or for which a no-further-action determination has
22 been issued, by a regional board or a local oversight program
23 pursuant to Section 25297.1 or Chapter 6.75 (commencing with
24 Section 25299.10), unless the local agency makes one of the
25 findings described in subdivision (b) of Section 25401.3 for a
26 hazardous material other than petroleum.

27 (G) A site that is, or becomes, subject to a corrective action
28 order issued pursuant to Section 25187, or a site that is, or
29 becomes, authorized or permitted pursuant to Chapter 6.5
30 (commencing with Section 25100) for the treatment, storage, or
31 disposal of hazardous waste.

32 (H) A site that is, or becomes, subject to a response or cleanup
33 operation under Chapter 7.4 (commencing with Section 8670.1)
34 of Division 1 of Title 2 of the Government Code.

35 (I) A site that is, or becomes, subject to an order for corrective
36 action issued pursuant to Part 5 (commencing with Section
37 45000) of Division 30 of the Public Resources Code.

38 (J) A site located within a redevelopment area established
39 pursuant to Division 24 (commencing with Section 33000).

1 (K) A site that is larger than five acres of contiguous property
2 under the same ownership, unless the site is an infill site, as
3 defined in Section 21061.0.5 of the Public Resources Code.

4 (i) For purposes of this subparagraph, a “qualified urban use,”
5 as defined in Section 21072 of the Public Resources Code,
6 includes an industrial use.

7 (ii) For purposes of this subparagraph, a parcel is adjoining or
8 immediately adjacent to the site, as required by subdivision (a) of
9 Section 21061.0.5 of the Public Resources Code, if the parcel is
10 separated from the site only by an improved public right-of-way.

11 ~~(L) A site that has one or more full-time equivalent employees~~
12 ~~on an annualized basis, excluding employees who are primarily~~
13 ~~responsible for maintaining site security.~~

14 ~~(M)~~ A site that is owned by any state or local public agency.

15 ~~(N)~~

16 (M) A site that is being used for productive agriculture.

17 ~~(O)~~

18 (N) A site for which the owner or operator, within 60 days
19 following receipt of a notice from a local agency issued pursuant
20 to Section 25401.3 or 25401.4, enters into a voluntary agreement
21 with an oversight agency to commence and complete a site
22 investigation and remediation of the property under that
23 oversight agency’s oversight and jurisdiction.

24 ~~(P)~~

25 (O) A site for which the owner or operator, within 60 days
26 following receipt of a notice from a local agency issued pursuant
27 to Section 25401.3 or 25401.4, requests the designation of an
28 administering agency to oversee a site investigation and remedial
29 action at the site pursuant to Chapter 6.65 (commencing with
30 Section 25260).

31 ~~(Q)~~

32 (P) Property that is the subject of continuous expansion or
33 improvement, and is owned or operated by an operating
34 industrial or commercial activity.

35 ~~(R)~~

36 (Q) Residential property with an owner-occupied dwelling.

37 ~~(S)~~

38 (R) Property occupied by a family-owned business that has no
39 employees other than members of the family or a business that
40 has no employees other than the owners.

1 ~~(T)~~

2 (S) Property that is dedicated to a public use by a public
3 utility, as provided in Section 1007 of the Civil Code.

4 ~~(U)~~

5 (T) Property acquired, to be acquired or proposed for use as a
6 schoolsite, prior to its occupancy for a school, if a school district
7 has entered into an enforceable environmental oversight
8 agreement with the department to conduct a preliminary
9 endangerment assessment or other response action at the property
10 pursuant to Section 17213.1 of the Education Code. The
11 exclusion provided in this subparagraph shall not apply if the
12 school district determines, after entering into that agreement, not
13 to pursue the use of the site as a school, or if the agreement
14 between the department and the school district is terminated or
15 expires.

16 (i) (1) “Qualified person” means one of the following:

17 (A) For activities conducted under Section 25401.6, an
18 environmental assessor, as defined in paragraph (2).

19 (B) For activities conducted under Section 25401.7, an
20 environmental assessor, as defined in paragraph (2), who also has
21 demonstrated expertise in hazardous materials site investigation
22 and cleanup.

23 (2) “Environmental assessor” means a class II environmental
24 assessor registered by the Office of Environmental Health
25 Hazard Assessment pursuant to Chapter 6.98 (commencing with
26 Section 25570), a professional engineer registered in this state, a
27 geologist registered in this state, a certified engineering geologist
28 registered in this state, or a licensed hazardous substance
29 contractor certified pursuant to Chapter 9 (commencing with
30 Section 7000) of Division 3 of the Business and Professions
31 Code. A licensed hazardous substance contractor shall hold the
32 equivalent of a degree from an accredited public or private
33 college or university or from a private postsecondary educational
34 institution approved by the Bureau for Private Postsecondary and
35 Vocational Education with at least 60 units in environmental,
36 biological, chemical, physical, or soil science, engineering
37 geology, or environmental or public health, or a directly related
38 science field. In addition, any person who conducts a phase I
39 environmental assessment shall have at least two years of
40 experience in the preparation of those assessments and any

1 person who conducts a preliminary endangerment assessment
2 shall have at least three years of experience in conducting those
3 assessments.

4 (j) “Reasonably foreseeable uses” means land uses that are
5 authorized under the applicable general plan and zoning code,
6 and any additional uses that are identified by the local land use
7 agency as reasonably foreseeable uses for a property at the time
8 the preliminary endangerment assessment for that property is
9 being prepared pursuant to Section 25401.4 or 25401.6.

10 (k) “Remedial action” means a remedial action, as defined in
11 subdivision (g) of Section 25260.

12 (l) “Remediation plan” means a proposal to complete a site
13 investigation and a remedial action on a property, a schedule for
14 the conduct of that site investigation and remedial action, the
15 method for the oversight of those actions, and the state and local
16 laws, ordinances, regulations, and standards that are applicable to
17 those actions, for approval by the oversight agency pursuant to
18 Section 25401.5 or 25401.7.

19 (m) “Regional board” means a California regional water
20 quality control board.

21 (n) “Release” has the same meaning as defined in Section
22 25320, but with respect to a hazardous material.

23 (o) “Responsible party” means a “responsible party” or “liable
24 person” as defined in subdivision (a) of Section 25323.5, or a
25 person subject to an order pursuant to subdivision (a) of Section
26 13304 of the Water Code.

27 (p) “Site investigation” has the same meaning as defined in
28 Section 25260.

29 (q) “Written determination of completion” means a document
30 issued by the oversight agency that certifies that a remedial
31 action carried out pursuant to this chapter has been satisfactorily
32 completed, in accordance with an approved remediation plan,
33 that applicable remedial action standards and objectives have
34 been achieved, that financial assurance for all operation and
35 maintenance activities, if applicable, has been obtained, and that
36 the property for which the written determination of completion is
37 issued does not pose a significant risk to human health or the
38 environment, does not impact the beneficial uses of waters of the
39 state, and is in a condition that allows it permanently to be used
40 for its reasonably foreseeable uses without any significant risk to

1 human health or any significant potential for future
 2 environmental damage. The written determination of completion
 3 shall also specifically describe any conditions, restrictions, or
 4 limitations imposed on the site, including financial assurance, if
 5 applicable, and any land use controls placed on the property. The
 6 written determination of completion shall specifically identify the
 7 locations where the remediation plan that formed the basis of the
 8 determination is kept on file by the oversight agency and the
 9 local agency. These files shall be made available to the public
 10 upon request.

11 ~~legislation that would add specific requirements necessary to~~
 12 ~~expedite the restoration and reuse of abandoned and~~
 13 ~~underutilized properties with real or perceived environmental~~
 14 ~~contamination.~~

15
 16 _____
 17 **CORRECTIONS:**
 18 **Digest**
 19 _____